

IT 95-53
Tax Type: INCOME TAX
Issue: Non-Filer (Income Tax)

STATE OF ILLINOIS
DEPARTMENT OF REVENUE
OFFICE OF ADMINISTRATIVE HEARINGS
CHICAGO, ILLINOIS

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THE DEPARTMENT OF REVENUE      )   Docket No.  
OF THE STATE OF ILLINOIS      )   SSN  
      v.                        )  
XXXXXX                        )   John E. White,  
                                )   Administrative Law Judge  
      Taxpayer                  )  
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RECOMMENDATION FOR DISPOSITION

SYNOPSIS: This matter is before the Department of Revenue's ("Department's") Office of the Administrative Hearings as the result of a timely protest of the Department's Notice of Deficiency ("NOD") issued against XXXXX ("Taxpayer") for tax, penalty, and interest pursuant to the Illinois Income Tax Act ("IITA"), 35 ILCS 5/904(a). The basis of the NOD was the Department's determination that Taxpayer failed to report to the Department final adjustments to Taxpayer's federal adjusted gross income for tax years ending 12/31/88 and 12/31/89.

FINDINGS OF FACT:

1. The Department's prima facie case, inclusive of all jurisdictional elements, is established by the NOD. 35 ILCS 5/914.
2. Taxpayer filed a Protest to the Department's NOD, however Taxpayer failed to include in that protest a written statement "setting forth the grounds on which such protest is based." 35 ILCS 5/908(a). See Notice of Inadequate Protest.
3. Taxpayer did not request a hearing.
4. Taxpayer did not submit documentary evidence indicating that she was in the process of protesting the federal adjustments in her gross income, nor did she request that this matter be delayed so that such a

protest could be initiated.

5. Taxpayer did not report the final federal change to the Department pursuant to 35 ILCS 506(a), (b).

6. Taxpayer provided no evidence tending to show that reasonable cause existed for her failure to file amended returns, or to make payments based on the final federal change.

CONCLUSIONS OF LAW: Pursuant to 904(a) of the IITA, a Notice of Deficiency is prima facie evidence of the correctness of the amount of tax and penalties due. 35 ILCS 5/904(a). Any person required to file an Illinois income tax return is required to notify the Department, within the time frame set by statute, of any final federal change which affects the computation of such person's base income. 35 ILCS 506(a), (b). In this matter, Taxpayer failed to present any evidence to rebut the prima facie case of the Department. Accordingly, Taxpayer is subject to additional tax.

In addition, the NOD proposed the assessment of a penalty for Taxpayer's failure to pay the entire tax liability by the due date. 35 ILCS 5/1005. Penalties imposed under that provision, however, shall not apply if the failure to pay the tax when due was due to reasonable cause. 35 ILCS 735/3-8. The existence of reasonable cause justifying abatement of a penalty is a factual determination that can only be decided on a case by case basis. See *Rorabaugh v. United States*, 611 F.2d 211 (7th Cir. 1979); *Dumont Ventilation Co. v. Dept. of Revenue*, 99 Ill. App. 3d 263 (3d Dist. 1987). Here, Taxpayer failed to tender evidence showing reasonable cause for her failure to report the change or pay the tax. I therefore recommend that the Director finalize the Notice of Deficiency as issued.

Administrative Law Judge